

ORDER BELOW EXH.52 IN RCS NO.46/2012

- 1) The defendants filed this application for recasting of issues.
- 2) The plaintiffs resisted the application vide their say at Exh.52.
- 3) It is the contention of the defendants vide this application that the plaintiffs pleaded that their family were the owners of Old Survey No.103 Hissa No.7 and defendants' predecessors were the tenants in the area shown by blank portion in the map annexed to the plaint. The plaintiffs alleged that only 4 acre of land was sold to the predecessors of the defendants. But, through mistake of revenue authorities, name of defendants' predecessor was entered to the entire Gat No.1067 i.e. Old Survey No.103, Hissa No.7. Accordingly, the plaintiffs filed the suit for declaration of ownership of the suit property since their ancestors and for perpetual injunction against the defendants. The defendants filed their written-statement at Exh.37, wherein they denied the case of the plaintiffs. They contended that they are in possession of the entire suit property since their predecessors. They pleaded that entire Gat No.1067 was found in the possession of the defendants at the time of Consolidation Scheme and accordingly, consolidation certificate was issued in favour of defendants' predecessor. In suit for partition, bearing Special Civil Suit No.94/1992 in the Court of Civil Judge, Senior Division, Ratnagiri, the present plaintiffs were defendants No.13 and 14 and they did not file any objection. In order to take undue advantage of the practice followed in the sale proceedings to mention cultivable area, the plaintiffs filed this false and vexatious suit. The revenue record for the last 50 years shows the possession and ownership of the defendants over the entire Gat No.1067. Under these circumstances,

entire burden to prove the so called case lies upon the plaintiffs. However, this Court framed recasted issues No.1 to 9 and by virtue of issues No.4 and 5, burden is casted upon the defendants. Issues No.4 and 5 should not have been framed considering the pleadings of the plaintiffs and the fact that sale proceedings under Tenancy Law was decided long back and revenue record showing the ownership and possession of the defendants over Gat No.1067. Therefore, the defendants prayed for recasting of issues by allowing this application.

4) The plaintiffs resisted the application vide their say at Exh.62. They contended that only 4 acres of land out of Gat No.1067 was cultivated by the defendants' family as tenant and accordingly, only that portion of land of Gat No.1067 was sold out to the defendants. However, in the written-statement, the defendants claimed their possession as tenant over the entire Gat No.1067 in the suit property. The defendants claimed their tenancy over the suit property and they pleaded that entire Gat No.1067 including the suit property was sold out to them. Therefore, in view of Section 101 of the Indian Evidence Act, burden to prove this fact lies on the defendants. Accordingly, the proper issues were framed at Exh.52. There is no need to recast these issues. Hence, the defendants sought rejection of the application.

5) Perused the record.

6) Heard Ld.Adv.Shri. M.M.Jain for the defendants and Ld.Adv.Shri.Y.R.Patkar for the plaintiffs.

7) Considering the rival submissions of both the parties and after having heard the parties, the following points arise for my consideration.

These points are mentioned here-in-below along with my findings for the reasons mentioned thereunder:-

Sr.No.	P O I N T S	FINDINGS.
1)	Whether the Issues are required to be recasted as claimed by the defendants?.....No.	
2)	What Order?As per final order the application is rejected

REASONINGS

AS TO POINT NO.1:-

8) On perusal of the record, it reveals that my Ld.Predecessor -in-office framed issues at Exh. 40. Thereafter, considering the pleadings of the parties, I recasted issues at Exh. 40 by passing detail order below Exh. 1 on 25/07/2017. Issues No. 1 to 7 suggested by the defendants vide this application are already covered by issues No. 1 to 3 and 6 to 9 at Exh. 40. Therefore, so far as issues suggested by the defendants by way of this application are concerned, they are not required to be framed. The defendants prayed for deletion of issues No. 4 and 5 by way of this application. Therefore, whether issues No. 4 and 5 are required to be deleted or not? is the subject of further discussion.

9) The plaintiffs pleaded that the suit property i.e. area of land admeasuring H.15.56 R i.e. 38 Acres, 16 Gunthe out of Gat No. 1067, original Survey No. 103, Hissa No. 7 is the ancestral property of the plaintiffs. The predecessor of the defendants viz., Laxman Sonsheth Shelar alias Teli was tenant in the land admeasuring 4 Acres out of Survey No. 103, Hissa No. 7 and only such area of land came to be sold to the predecessor

of the defendants viz., Shantaram Laxman Shelar vide Order No. ALT 663 dated 16/01/1970. The defendants are not concerned with remaining land admeasuring 38 Acres 16 Gunthe of Gat No. 1067 i.e. the suit property.

10) Per contra, the defendants pleaded that predecessor of the defendants Laxman Sonsheth Shelar alias Teli was tenant in the total area of land of Survey No. 103, Hissa No. 7 i.e. Gat No. 1067. The suit property i.e. area of land admeasuring 38 Acres, 16 Gunthe, being *Warkas Land*, was part and parcel of the cultivable land admeasuring 4 Acres and accordingly, total area of land of Survey No.103, Hissa No. 7 i.e. Gat No. 1067 came to be sold to the predecessor of the defendants viz. Shantaram Laxman Shelar. As such, the defendants are the owners of the suit property.

11) On reading the pleadings of the parties, it becomes clear that the plaintiffs and the defendants claimed right of ownership over the suit property adverse to each other. The plaintiffs claimed their ownership over the suit property being their ancestral property. On the contrary, the defendants claimed their ownership over the suit property being entire land of Gat No. 1067 i.e. Survey No. 103, Hissa No. 7 was sold to their predecessor Shantaram Laxman Shelar on count of their tenancy over this land.

12) The plaintiffs claimed the relief of declaration that they are the owners of the suit property being it their ancestral property. Accordingly, issue No. 1 is framed at Exh.40. However, the defendants pleaded that the suit property, being *Warkas Land* and part and parcel of cultivable land admeasuring 4 Acres, came to be sold to their predecessor Shantaram Laxman Shelar vide Order No. ALT 663 dated 16/01/1970. The defendants

pleaded that it was a practice to mention only cultivable land in the sale proceedings under the Tenancy Law. As such, only cultivable land of 4 acres out of Survey No.103, Hissa No. 7 was mentioned in the Order No.ALT 663, dated 16/01/1970. Considering this pleading of the defendants, issues No.4 and 5 are framed at Exh.40 by virtue of Order below Exh.1 dated 25/07/2017. As the defendants claimed ownership over the suit property on the basis of their tenancy rights in Gat No. 1067 i.e. Survey No.103, Hissa No.7, it is necessary to ascertain “*whether predecessors of the defendants were tenants in the suit property i.e., area of land admeasuring 38 Acres, 16 Gunthe along with cultivable land of 4 Acres of Survey No.103, Hissa No.7?*” and “*whether the area of land admeasuring 38 Acres, 16 Gunthe, i.e., the suit property, being Warkas Land, came to be sold to the predecessor of the defendants along with cultivable land of 4 Acres of Survey No.103, Hissa No.7?*” Without determining these facts, issue No.1 which is related to the ownership of the suit property, cannot be decided. Therefore, issues No.4 and 5 are framed and these issues are proper considering the pleadings of the parties.

13) Ld.Adv.Shri. M.M.Jain for the defendants argued that the defendants have not claimed any relief by filing the counter-claim. Therefore, issues No.4 and 5, which casted burden on the defendants, are not necessary. However, it is not the rule that only when counter-claim is filed by the defendant, issues casting burden on the defendant are framed. As discussed above, the defendants came with specific pleadings that the predecessors of the defendants were tenants in the entire land of Gat No.1067, i.e., Survey No.103, Hissa No.7 and the suit property, being

Warkas Land and part and parcel of cultivable land of 4 Acres, came to be sold to the predecessor of the defendants vide Order No.ALT 663, dated 16/01/1970. Therefore, considering these facts pleaded by the defendants, burden to prove these facts lies on the defendants as per Section 101 of the Indian Evidence Act, 1872. As such, there is no substance in the arguments of the defendants.

14) Considering the above discussion, in order to determine title of the suit property, issues No.4 and 5 are necessary and they are proper issues considering the pleadings of the parties. Therefore, these issues are not required to be deleted. Hence, I answer point No.1 in negative.

AS TO POINT NO.2:-

Considering the above discussion, the application is liable to be rejected. Hence, I pass following order:-

ORDER

The application at Exh.52 is rejected

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Date :31/10/2018.

Place: Lanja,

**(D.M.Hinglajkar)
Civil Judge (J.D.), Lanja,
Dist.Ratnagiri**